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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91225355
Party	Plaintiff Energizer Brands, LLC
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Signature	/s/ John Gary Maynard, III
Date	03/02/2016
Attachments	Joint Request for Entry of Stipulations, Schedule Modifications, and a Protective Order.pdf(275480 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Application Serial No. 86/571,275  
Published in the *Official Gazette* on August 18, 2015  
Mark: BATTERISER

In the matter of Application Serial No. 86/571,464  
Published in the *Official Gazette* on August 18, 2015  
Mark: BATTERISE

Energizer Brands, LLC,	)	
	)	
Opposer,	)	Opposition No. 91225355
	)	
	)	
v.	)	
	)	
Batteroo, Inc.	)	
	)	
Applicant.	)	
	)	

**JOINT REQUEST FOR ENTRY OF STIPULATIONS, SCHEDULE MODIFICATIONS,  
AND A PROTECTIVE ORDER**

On February 10, 2106 Energizer Brands, LLC and Batteroo, Inc. (collectively the “Parties”), held the mandatory discovery conference required by Trademark Rule § 2.120(a). The parties reached the following agreements and stipulations, and request that the Board enter an order ratifying these stipulations and agreements.

**I. Method and Timing of Service**

The parties agree that all service between the parties shall be by email to each identified counsel of record for the party to be served. The 5 day mail rule in Trademark Rule § 2.119(c) shall apply to all email service.

## II. Schedule Modification

The Parties agree to permit rebuttal and reply expert reports and to adjust the schedule to permit their exchange. The parties request that the Board adopt the following schedule in place of the schedule set out in the Board's December 15, 2015 Scheduling Order. The dates in bold have been modified.

▪ Time to Answer	1/24/2016
▪ Deadline for Discovery Conference	2/23/2016
▪ Discovery Opens	2/23/2016
▪ Initial Disclosures Due	3/24/2016
▪ <b>Opening Expert Reports (party with the burden)</b>	<b>7/22/2016</b>
▪ <b>Rebuttal Expert Reports</b>	<b>8/22/2016</b>
▪ <b>Reply Expert Reports</b>	<b>9/22/2016</b>
▪ <b>Discovery Closes</b>	<b>10/15/2016</b>
▪ <b>Plaintiff's Pretrial Disclosures</b>	<b>12/5/2016</b>
▪ <b>Plaintiff's 30-Day Trial Period Begins</b>	<b>1/2/2017</b>
▪ <b>Plaintiff's 30-day Trial Period Ends</b>	<b>2/1/2017</b>
▪ <b>Defendant's Pretrial Disclosures</b>	<b>2/15/2017</b>
▪ <b>Defendant's 30-Day Trial Period Begins</b>	<b>2/27/2017</b>
▪ <b>Defendant's 30-day Trial Period Ends</b>	<b>3/29/2017</b>
▪ <b>Plaintiff's Rebuttal Disclosures</b>	<b>4/17/2017</b>
▪ <b>Plaintiff's 15-day Rebuttal Period Begins</b>	<b>4/25/2017</b>
▪ <b>Plaintiff's 15-day Rebuttal Period Ends</b>	<b>5/10/2017</b>

## III. Agreements Related to Discovery

The Parties agree to permit service of discovery on the opening day of the discovery period, as contemplated by Trademark Rule §2.120(a)(3), rather than waiting until after the service of initial disclosures.

The Parties also agree to the Electronically Stored Information protocol attached as Exhibit A.

The Parties agree to the modified version of the Board's form protective order attached as Exhibit B. The parties request that the Board enter the attached protective order to facilitate open exchange of discovery in this matter.

Batteroo, Inc. agrees to provide a sample of the product to be sold under the opposed marks after the product has been shipped to consumers. Batteroo estimates that shipment will occur in March.

#### **IV. Substantive Stipulations**

Batteroo, Inc. stipulates that “ENERGIZER” is famous under 15 U.S.C. § 1125(c)(2)(A).

Dated: February 3, 2016

Respectfully submitted,

By: /s/ John Gary Maynard, III  
John Gary Maynard, III  
Matthew Nigriny  
Hunton & Williams LLP  
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Telephone (804)788-8200

*Attorneys for Opposer,  
Energizer Brands, LLC*

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing NOTICE OF OPPOSITION and exhibits thereto have been properly served upon the correspondent of record, via email, on this 3<sup>rd</sup> day of February, 2016.

Pardees Parvin  
Batteroo, Inc.  
310 De Guigne Road  
Sunnyvale, CA 94085

/s/ John Gary Maynard, III  
John Gary Maynard, III

**EXHIBIT A**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
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Applicant.	)	
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**DISCOVERY PLAN FOR ELECTRONICALLY STORED INFORMATION**

Energizer Brands, LLC (Opposer) and Batteroo, Inc. (Applicant) (collectively, “the Parties” and each a “Party”), by their respective counsel in the above-captioned action, stipulate and agree that the following discovery plan shall govern the search and production of ESI in this matter (the “Discovery Plan”).

**I. SCOPE**

1. This Discovery Plan shall govern the production of documents and electronically stored information (“ESI”), as described in Federal Rules of Civil Procedure 26, 33, and 34 and § 2.120 of the Rules of Practice in Trademark Cases.

2. Nothing in this Discovery Plan shall supersede the provisions of any subsequent Stipulated Protective Order.

3. In an effort to expedite the discovery process, the Parties agree to initially limit e-discovery to the period of time most likely to contain the most relevant information to this dispute, 6 months prior to the first consideration of the BATTERISER and BATTERISE Marks [Date to be provided by Batteroo] to December 15, 2015. Nothing in this provision shall prohibit either party from producing or relying on ESI created prior to or after these cutoff dates, nor excuse a party from producing relevant ESI or other documents of which they are aware created prior to or after these cutoff dates. The parties agree to negotiate in good faith to extend the relevant time cutoff for certain discovery topics if necessary. The parties further agree that ESI related to Batteroo's technology embodied in the commercial products to be sold under the BATTERISER and BATTERISE Marks will be searched back to 6 months prior to the date of conception [date to be supplied by Batteroo] without the need for further negotiation.

4. The Parties further agree that they shall preserve, but not be obligated to collect nor produce (except as noted in the proceeding paragraph), other potentially relevant ESI created between the date 6 months prior to the date of conception of Batteroo's technology embodied in the commercial products to be sold under the BATTERISER and BATTERISE Marks and the date 6 months prior to the first consideration of the BATTERISER and BATTERISE Marks. The Parties reserve the right to request such ESI in the future and reserve the right to object to such production.

## **II. SEARCHING**

### **1. Search Methodology**

a. The Parties agree that relevant ESI may be identified for production by the following means:

(1) a manual process conducted by the custodians or in-house counsel or outside counsel; and/or

(2) the use of native application search functionality native to the e-mail or other software (e.g. searching within Outlook)

b. In addition to, or instead of the foregoing methodologies, the Parties may agree to use Boolean or other more advanced search capabilities.

### **2. Scope of Search**

a. The parties agree to search E-mail and unstructured data (e.g., word processing documents, spreadsheets, presentation slides) of the individuals identified on their initial disclosures. Each party may also request the search of no more than 3 additional custodians per party absent agreement between the parties to expand the list of applicable custodians. Nothing in this agreement shall prohibit a party from objecting to an ESI search for a custodian not identified in the objecting party's initial disclosures on relevance, burden, or other grounds.

b. To facilitate searching, the parties agree to exchange proposed search terms, which may include Boolean logic. Each party shall be limited to 12 search terms, absent an agreement to expand the number of search terms. Any search term producing more than 500 unique hits per custodian may be rejected by the



searching party. Any rejected search term may be replaced by the requesting party (as to all custodians, or as to the custodian who had more than 500 hits) with a different or narrower version of the same term, until a replacement term yields less than 500 unique hits for each custodian or for the custodian who had more than 500 hits, as appropriate. Nothing in this provision shall prohibit either party from making additional targeted requests for specific documents after production of non-privileged ESI documents identified by this search protocol.

c. The parties will exchange preliminary search terms within 45 days of the execution of this Discovery Plan. At any time after the exchange of search terms, the searching party may notify the requesting party that a term yields results in excess of 500 unique hits for one or more custodians, as described in the preceding paragraph.

d. The search of a custodian's ESI shall include searches of shared drives, network storage, cloud storage, etc. ("Non-Local Data Storage"), if they are used in the ordinary course of that custodian's job and/or if that custodian believes relevant material has been saved to Non-Local Data Storage.

(a) If a Producing Party has reason to believe that responsive documents are in a language other than English, the Party will include in its proposed search terms any translated search terms it proposes to use.

e. Inaccessible data

(1) The following types of data stores are presumed to be inaccessible and are not subject to discovery absent a particularized need for the data as established by the facts and legal issues of the case:

(a) Deleted, slack, fragmented, or other data only accessible by forensics.

(b) Random access memory (RAM), temporary files, or other ephemeral data that are difficult to preserve without disabling the operating system.

(c) On-line access data such as temporary internet files, history, cache, cookies, and the like.

(d) Back-up data.

(e) Server, system or network logs.

(f) Data remaining from systems no longer in use that is unintelligible on the systems in use.

(g) Electronic data (e.g. email, calendars, contact data, notes, and text messages) sent to or from mobile devices (e.g., iPhone, iPad, Android, and Blackberry devices), provided that a copy of all such electronic data is routinely saved elsewhere (such as on a server, laptop, desktop computer, or “cloud” storage).

### III. PRODUCTION FORMAT

#### 3. Document Format.

a. Electronically stored information derived from e-mail and other electronically created files (e.g. Microsoft Office files, WordPerfect) will be produced: as Bates-labeled single page TIFF images with a load file compliant with the specifications in Exhibit 1. Spreadsheets, desktop databases (such as MicrosoftAccess), audio, video, and other files with substantial functionality that will be lost in the conversion to TIFF shall be produced natively, in a manner compliant with the specifications in Exhibit 1.

b. Each Party reserves the right to request native files for documents that are difficult to understand after they have been produced in the format specified herein or that contain potentially relevant embedded information, and such requests will not be unreasonably denied. Such a request shall be made according to the following protocol.

c. Web pages, social media data and other information not otherwise covered in subparts 1.a.(1) or (2) above shall be produced as “screen shots” or “screen captures” unless the Parties agree to perform bulk exports of entire websites and social media accounts into native format.

d. Metadata format. The Parties agree to produce the ESI metadata for the fields in Exhibit 1.

b. De-Duplication. A Party is only required to produce a single copy of a responsive document.

(1) Parties may de-duplicate stand-alone documents or entire document families globally using MD5 or SHA-1 Hash<sup>1</sup> value matching. ESI that is not an exact duplicate may not be removed.

(2) Common system files defined by the NIST library (<http://www.nsl.nist.gov/>) need not be produced

(3) Attachments to e-mails shall not be eliminated from the parent e-mail

(4) Paper documents shall not be eliminated as duplicates of responsive ESI. To the extent the Parties de-duplicate stand-alone electronic documents against an e-mail attachment, the attachment to the e-mail must be the document that is produced.

c. Native files. The Parties will make reasonable efforts to ensure that documents produced in native form are decrypted (or that passwords are supplied), but the Parties have no duty to identify encrypted documents prior to production.

#### **IV. THIRD-PARTY ESI**

1. A Party that issues a non-party subpoena (the “Issuing Party”) shall include a copy of this Discovery Plan with the subpoena and state that the Parties to the litigation have requested that third-parties produce documents in accordance with the specifications set forth herein.

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<sup>1</sup> A Hash value is a mathematical algorithm that represents a unique value for a given set of data or document, similar to a digital fingerprint. *See* The Sedona Conference Glossary, cited at note 2 *supra*.

2. The Issuing Party is responsible for producing any documents obtained under a subpoena to all other Parties.

3. If the Issuing Party receives any hard-copy documents or native files, the Issuing Party will process the documents in accordance with the provisions of this Discovery Plan, and then produce the processed documents to all other Parties.

4. However, any documents the Issuing Party does not intend to process for its own use may be disseminated to all other Parties in the format in which such documents are received by the Issuing Party. If the Issuing Party subsequently processes any such documents, the Issuing Party will produce those processed documents to all other Parties.

5. If the non-party production is not Bates-stamped, the Issuing Party will endorse the non-party production with unique prefixes and Bates numbers prior to producing them to all other Parties.

## **V. OTHER**

1. In scanning paper documents, distinct documents should not be merged into a single record, and single documents should not be split into multiple records (*i.e.*, paper documents should be logically unitized<sup>2</sup>). In the case of an organized compilation of separate documents – for example, a binder containing several separate documents behind numbered tabs – the document behind each tab should be scanned separately, but the relationship among the documents in the compilation should be reflected in the proper coding of the beginning and

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<sup>2</sup> Logical Unitization is the process of human review of each individual page in an image collection using logical cues to determine pages that belong together as documents. Such cues can be consecutive page numbering, report titles, similar headers and footers and other logical indicators. *See* The Sedona Conference Glossary, cited at note 2 *supra*.

ending document and attachment fields. The Parties will make their best efforts to unitize the documents correctly.

2. This Discovery Plan shall have no effect on any producing Party's right to seek reimbursement for costs associated with collection, review, or production of documents or ESI.

3. Nothing in this Discovery Plan shall be interpreted to require disclosure of irrelevant information or relevant information protected by the attorney-client privilege, work-product doctrine, or any other applicable privilege or immunity. The Parties do not waive any objections as to the production, discoverability, admissibility, or confidentiality of documents and ESI.

4. Nothing in this Discovery Plan is intended or should be interpreted as narrowing, expanding, or otherwise affecting the rights of the Parties or third parties to object to a subpoena.

5. Counsel executing this Discovery Plan warrant and represent that they are authorized to do so on behalf of themselves and their respective clients.

OPPOSER'S COUNSEL

APPLICANT'S COUNSEL

\_\_\_\_\_  
Dated: \_\_\_\_\_

\_\_\_\_\_  
Dated: \_\_\_\_\_

## **EXHIBIT 1**

### **1. IMAGES:**

- Produce documents in Single Page Group IV TIFF files
- Image Resolution at least 300 DPI
- Black and White unless color is necessary to understand the meaning
- File Naming Convention: Match Bates Number
- Insert Placeholder image for files produced in Native form (see Section 2)
- Original document orientation shall be retained

### **2. FULL TEXT EXTRACTION / OCR:**

- Produce full extracted text for all file types of ESI (Redacted text will not be produced)
- Production format: Single text file for each document, not one text file per page
- File Naming Convention: Match Beg Bates Number

### **3. LOAD FILE SPECIFICATIONS:**

- **Images Load File:** Opticon OPT file
- **Metadata Load File:** Concordance DAT file with field header information added as the first line of the file. Export using Concordance default delimiters.
- **Extracted TEXT:** Reference File Path to TEXT file in DAT file
- **Native Files Produced:** Reference File Path to Native file in DAT file

### **4. ESI PRODUCTION METADATA FIELDS:**

- **BegBates:** Beginning Bates Number
- **EndBates:** Ending Bates Number
- **BegAttach:** Beginning Bates number of the first document in an attachment range
- **EndAttach:** Ending Bates number of the last document in attachment range
- **Custodian:** Name of the Custodian of the File(s) Produced – Last Name, First Name format
- **FileName:** Filename of the original digital file name
- **NativeLink:** Path and filename to produced Native file
- **EmailSubject:** Subject line extracted from an email message
- **Title:** Title field extracted from the metadata of a non-email document
- **Author:** Author field extracted from the metadata of a non-email document
- **From:** From field extracted from an email message
- **To:** To or Recipient field extracted from an email message
- **Cc:** CC or Carbon Copy field extracted from an email message
- **BCC:** BCC or Blind Carbon Copy field extracted from an email message
- **DateRcvd:** Received date of an email message (mm/dd/yyyy format)
- **DateSent:** Sent date of an email message (mm/dd/yyyy format)
- **DateCreated:** Date that a file was created (mm/dd/yyyy format)
- **DateModified:** Modification date(s) of a non-email document

- **Fingerprint:** MD5 or SHA-1 has value generated by creating a binary stream of the file
- **ProdVolume:** Identifies production media deliverable
- **ExtractedText:** File path to Extracted Text/OCR File
- **Redacted:** “Yes,” for redacted documents; otherwise, blank

**6. PAPER DOCUMENTS METADATA FIELDS:**

- **BegBates:** Beginning Bates Number
- **EndBates:** Ending Bates Number
- **BegAttach:** Beginning Bates number of the first document in an attachment range
- **EndAttach:** Ending Bates number of the last document in attachment range
- **Custodian:** Name of the Custodian of the File(s) Produced – Last Name, First Name format
- **ProdVolume:** Identifies production media deliverable



## EXHIBIT B

### IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

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Applicant.	)	
	)	

### PROVISIONS FOR PROTECTING CONFIDENTIALITY OF INFORMATION REVEALED DURING BOARD PROCEEDING

Information disclosed by any party or non-party witness during this proceeding may be considered confidential, a trade secret, or commercially sensitive by a party or witness. To preserve the confidentiality of the information so disclosed, the parties have agreed to be bound by the terms of this order, as modified herein, and by any additional provisions to which they may have agreed and attached to this order. As used in this order, the term “information” covers any format, but typically comprises both oral testimony and documentary material.

Agreement of the parties is indicated by the signatures of the parties’ attorneys and/or the parties themselves at the conclusion of the order. Imposition of the terms by the Board is indicated by signature of a Board attorney or Administrative Trademark Judge at the conclusion of the order. The terms are binding from the date the parties or their attorneys sign the order, in standard form or as modified or supplemented, or from the date of imposition by a Board attorney or judge.

### TERMS OF ORDER

1. Classes of Protected Information.

The Rules of Practice in Trademark Cases provide that all inter partes proceeding files, as well as the involved registration and application files, are open to public inspection. The terms of this order are not to be used to undermine public access to files. When appropriate, however, a party or witness, on its own or through its attorney, may seek to protect the confidentiality of information by employing one of the following designations.

Confidential -Material to be shielded by the Board from public access.

Highly Confidential – Attorneys Eyes Only - Material to be shielded by the Board from public access and subject to agreed restrictions on access even as to the parties and/or their attorneys. Highly Confidential – Attorney Eyes Only may be used to protect trade secrets or any other information that the designating party reasonably believes to be commercially sensitive.

Information designated either Confidential or Highly Confidential – Attorneys Eyes Only is collectively referred to in this order as “Protected Information.”

2. Information Not to Be Designated as Protected Information.

Information may not be designated as subject to any form of protection if it (a) is, or becomes, public knowledge, as shown by publicly available writings, other than through violation of the terms of this document; (b) is acquired by a non-designating party or non-party witness from a third party lawfully possessing such information and having no obligation to the owner of the information; (c) was lawfully possessed by a non-designating party or non-party witness prior to the opening of discovery in this proceeding, and for which there is written evidence of the lawful possession; (d) is disclosed by a non-designating party or non-party witness legally compelled to disclose the information; or (e) is disclosed by a non-designating party with the approval of the designating party.

3. Access to Protected Information.

The provisions of this order regarding access to Protected Information are subject to modification by written agreement of the parties or their attorneys, or by motion filed with and approved by the Board.

Judges, attorneys, and other employees of the Board are bound to honor the parties’ designations of Protected Information but are not required to sign forms acknowledging the terms and existence of this order. Court reporters, stenographers, video technicians or others who may be employed by the parties or their attorneys to perform services incidental to this proceeding will be bound only to the extent that the parties or their attorneys make it a condition of employment or obtain agreements from such individuals, in accordance with the provisions of paragraph 4.

- “Parties” are defined as including individuals, officers of corporations, partners of partnerships, and management employees of any type of business organization.
- “Attorneys” are defined as including in-house counsel and outside counsel for the Parties, including support staff operating under counsel’s direction, such as

paralegals or legal assistants, secretaries, and any other employees or independent contractors operating under counsel's instruction.

- "Independent Experts" are defined as individuals retained by a party for purposes related to prosecution or defense of the proceeding but who are not otherwise employees of either the party or its attorneys.
- "Non-party Witnesses" are defined as any individuals to be deposed during discovery or trial, whether willingly or under subpoena issued by a court of competent jurisdiction over the witness.

Parties and their Attorneys shall have access to information designated as Confidential. Independent Experts, Non-party Witnesses, and any other individuals not otherwise specifically covered by the terms of this order may be afforded access to Confidential information in accordance with the terms that follow in paragraph 4.

Only Attorneys and Independent Experts shall have access to information designated as Highly Confidential – Attorneys Eyes Only. Before receiving information designated Highly Confidential – Attorneys Eyes Only, Independent Experts must comply with the procedures set out in Paragraph 4 below.

4. Disclosure to someone other than Parties or Attorneys.

Prior to disclosure of Protected Information by any Party or its Attorney to any individual not already provided access to such Protected Information by the terms of this order, the individual shall be informed of the existence of this order and provided with a copy to read. The individual will then be required to certify in writing that the order has been read and understood and that the terms shall be binding on the individual. No individual shall receive any Protected Information until the party or attorney proposing to disclose the information has received the signed certification from the individual. A form for such certification is attached to this order. The party or attorney receiving the completed form shall retain the original.

5. Responses to Written Discovery.

Responses to interrogatories under Federal Rule 33 and requests for admissions under Federal Rule 36, and which the responding party reasonably believes to contain Protected Information shall be prominently stamped or marked with the appropriate designation from paragraph 1. Any inadvertent disclosure without appropriate designation shall be remedied as soon as the disclosing party learns of its error, by informing all adverse parties, in writing, of the error. The parties should inform the Board only if necessary because of the filing of Protected Information not in accordance with the provisions of paragraph 11.

6. Production of Documents.

If a party responds to requests for production under Federal Rule 34 by making copies and forwarding the copies to the inquiring party, then the copies shall be prominently stamped or marked, as necessary, with the appropriate designation from paragraph 1. If the responding party makes documents available for inspection and copying by the inquiring party, all documents

shall be considered Protected Information during the course of inspection. After the inquiring party informs the responding party what documents are to be copied, the responding party will be responsible for prominently stamping or marking the copies with the appropriate designation from paragraph 1. Any inadvertent disclosure without appropriate designation shall be remedied as soon as the disclosing party learns of its error, by informing all adverse parties, in writing, of the error. The parties should inform the Board only if necessary because of the filing of Protected Information not in accordance with the provisions of paragraph 11.

7. Depositions.

- a. Protected Information discussed, used, or produced during a discovery deposition, or discussed, used, produced, or offered into evidence during a testimony deposition should be orally identified as such by the producing or offering party at the outset of any discussion of the contained in the document. In addition, the documents must be prominently stamped or marked with the appropriate designation.
- b. Counsel may also designate the entire deposition and associated exhibits with one of the designations in Paragraph 1. At any time after the delivery of the final transcript, the non-designating party may request that the designating party designate specific portions of the transcript, and any specific exhibits or attachments, that are to be treated as Protected Information, by electing the appropriate designation from paragraph 1. The designating party shall have 15 days from the request to provide the designations. The requesting party shall then have 15 days to designate any portions of the transcript or exhibits that it believes should be Protected Information. After such designation, any portions of the transcript not designated Protected Information by either party shall be considered non-protected.
- c. If a deposition is not designated as Protected Information in its entirety during the deposition, the parties shall have 30-days following delivery of the final transcript to designate the portions of the transcript, and any specific exhibits or attachments as Protected Information, by electing the appropriate designation from paragraph 1. After the 30 day period any portions of the transcript not designated Protected Information by either party shall be considered non-protected.

8. Filing Notices of Reliance.

When a party or its attorney files a notice of reliance during the party's testimony period, the party or attorney is bound to honor designations made by the adverse party or attorney, or non-party witness, who disclosed the Protected Information, so as to maintain the protected status of the information.

9. Briefs.

When filing briefs, memoranda, or declarations in support of a motion, or briefs at final hearing, the portions of these filings that discuss Protected Information, whether information of

the filing party, or any adverse party, or any non-party witness, should be redacted. The rule of reasonableness for redaction is discussed in paragraph 11 of this order.

10. Handling of Protected Information.

Disclosure of Protected Information under the terms of this order is intended only to facilitate the prosecution or defense of this case. Any recipient of Protected Information disclosed in accordance with the terms of this order shall not use it for any other purpose. Recipients are obligated to maintain the confidentiality of the Protected Information and shall exercise reasonable care in handling, storing, using or disseminating the Protected Information.

Within sixty (60) days after the conclusion of this opposition, including the exhaustion of all appeals, or within sixty (60) days after dismissal pursuant to a settlement agreement, each Party or other person subject to the terms of this Protective Order is under an obligation to destroy or return to the producing party all materials and documents containing "Confidential Information" or "Highly Confidential Information," and to certify to the producing party that this destruction or return has been done. However, outside counsel for any Party is entitled to retain all court papers, trial transcripts, exhibits, and attorney work provided that any such materials are maintained and protected in accordance with the terms of this Protective Order.

11. Redaction; Filing Material With the Board.

When a party or attorney must file Protected Information with the Board, or a brief that discusses such information, the Protected Information or portion of the brief discussing the same should be redacted from the remainder. A rule of reasonableness should dictate how redaction is effected.

Redaction can entail merely covering a portion of a page of material when it is copied in anticipation of filing but can also entail the more extreme measure of simply filing the entire page under seal as one that contains primarily Protected Information. If only a sentence or short paragraph of a page of material is Protected Information, covering that material when the page is copied would be appropriate. In contrast, if most of the material on the page is Protected Information, then filing the entire page under seal would be more reasonable, even if some small quantity of non-confidential material is then withheld from the public record. Likewise, when a multi-page document is in issue, reasonableness would dictate that redaction of the portions or pages containing Protected Information be effected when only some small number of pages contain such material. In contrast, if almost every page of the document contains some Protected Information, it may be more reasonable to simply submit the entire document under seal. Occasions when a whole document or brief must be submitted under seal should be very rare.

Protected Information, and pleadings, briefs or memoranda that reproduce, discuss, or paraphrase such information, shall be filed with the Board under seal. The envelopes or containers shall be prominently stamped or marked with a legend in substantially the following form:

## **CONFIDENTIAL**

This envelope contains documents or information that are subject to a protective order or agreement. The confidentiality of the material is to be maintained and the envelope is not to be opened, or the contents revealed to any individual, except by order of the Board.

### 12. Acceptance of Information; Inadvertent Disclosure.

Acceptance by a party or its attorney of Protected Information shall not constitute an admission that the information is, in fact, entitled to protection. Inadvertent disclosure of information which the disclosing party intended to designate as Protected Information shall not constitute waiver of any right to claim the information as protected upon discovery of the error.

### 13. Challenges to Designations of Protected Information.

If the parties or their attorneys disagree as to whether certain information should be Protected Information, they are obligated to negotiate in good faith regarding the designation by the disclosing party. If the parties are unable to resolve their differences, the party challenging the designation may make a motion before the Board seeking a determination of the status of the information.

The party designating information as protected will, when its designation is challenged, bear the ultimate burden of proving that the information should be protected.

### 14. Board's Jurisdiction; Handling of Materials After Termination.

The Board's jurisdiction over the parties and their attorneys ends when this proceeding is terminated. A proceeding is terminated only after a final order is entered and either all appellate proceedings have been resolved or the time for filing an appeal has passed without filing of any appeal.

### 15. Other Rights of the Parties and Attorneys.

This order shall not preclude the parties or their attorneys from making any applicable claims of privilege during discovery or at trial. Nor shall the order preclude the filing of any motion with the Board for relief from a particular provision of this order or for additional protections not provided by this order.

By Agreement of the Following, effective: \_\_\_\_\_

Respectfully submitted,

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So Ordered by the Board, effective \_\_\_\_\_

\_\_\_\_\_  
Trademark Trial and Appeal Board